

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

DAVID D. HARRIS,

Plaintiff,

v.

J. DUBE,

Defendant.

No. 2:23-CV-1664-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983.

On November 17, 2023, Plaintiff filed a document captioned “Notice of Change of Address and Plaintiff’s Summary Judgment in Favor of the Plaintiff Fed. R. Civ. P. Rule 56(c)(a) & (A).” ECF No. 11. Plaintiff’s address has been updated on the Court’s docket pursuant to Plaintiff’s notice. To the extent Plaintiff also seeks summary judgment under Rule 56, for the reasons stated below, the motion will be disregarded as improperly filed.

First, a review of the docket reflects that Defendant’s motion to dismiss, ECF No. 18, filed on March 22, 2024, remains pending. That motion will be addressed by separate findings and recommendations. Given that the case has not yet moved past the pleading stage and no discovery and scheduling order has been issued, Plaintiff’s motion for summary judgment is premature. Second, the motion is procedurally defective. Federal Rule of Civil Procedure

1 56(c)(a) requires that motions for summary judgment cite to particular evidence showing that
2 summary judgment in the movant's favor is appropriate. Plaintiff's two-page handwritten
3 motion, which is not accompanied by any evidence, fails to meet this procedural requirement.
4 Third, Eastern District of California Local Rule 260(a) requires that motions for summary
5 judgment be accompanied by a Statement of Undisputed Facts. Plaintiff's motion is not
6 accompanied by such a statement.

7 For these reasons, Plaintiff's motion will be disregarded without prejudice to
8 renewal at a later stage of these proceedings after the Court has issued a discovery and scheduling
9 order for this case.

10 Accordingly, IT IS HEREBY ORDERED as follows:

11 1. Plaintiff's filing at ECF No. 11 is DISREGARDED to the extent Plaintiff
12 seeks an order granting summary judgment in his favor.

13 2. Plaintiff may renew his motion for summary judgment, consistent with
14 Federal Rule of Civil Procedure 56 and Eastern District of California Local Rule 260 at a later
15 stage of these proceedings after the Court has issued a discovery and scheduling order.

16 3. The Clerk of the Court is directed to terminate ECF No. 11 as a pending
17 motion.

18
19 Dated: July 8, 2024



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE